



**4310-MR-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Ocean Energy Management**

**30 CFR Part 553**

**[Docket ID: BOEM-2012-0076; MMAA104000 ]**

**RIN 1010-AD87**

**Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities**

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Ocean Energy Management (BOEM) is proposing to add a new subpart to its regulations on Oil Spill Financial Responsibility (OSFR) for Offshore Facilities designed to increase the limit of liability for damages applicable to offshore facilities under the Oil Pollution Act of 1990 (OPA), to reflect significant increases in the Consumer Price Index (CPI) since 1990, and to establish a methodology BOEM would use to periodically adjust for inflation the OPA offshore facility limit of liability. BOEM proposes to increase the limit of liability for damages from \$75 million to \$133.65 million. OPA requires inflation adjustments to the offshore facility limit of liability not less than every three years to preserve the deterrent effect and “polluter pays” principle embodied in the OPA Title I liability and compensation provisions. In addition, the Department of the Interior has determined that this change would further protect the environment by ensuring that any party that causes an oil spill would pay an increased amount of any potential damages.

BOEM is publishing this update to its regulations and is soliciting public comments on the method of updates, the clarity of the rule and any other pertinent matters. The Department is limiting the rulemaking comment period to 30 days since it does not anticipate receiving adverse comments on this rulemaking.

**DATES:** Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD87 as an identifier in your submission.

- Federal eRulemaking Portal: <http://www.regulations.gov>. In the entry entitled, “Enter Keyword or ID,” enter BOEM-2012-0076, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking.

BOEM will post all comments received during the comment period.

- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management; Attention: Peter Meffert, Office of Policy, Regulations and Analysis (OPRA); 381 Elden Street, MS-4001, Herndon, Virginia 20170-4817. Please reference “Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities” in your comments and include your name and return address so that we may contact you if we have questions regarding your submission.

- e-mail comments to the Department of the Interior; Bureau of Ocean Energy Management; Attention: Peter Meffert, Office of Policy, Regulations and Analysis (OPRA) at [peter.meffert@boem.gov](mailto:peter.meffert@boem.gov).

Public availability of comments:

- Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the limit of liability established by this proposed rule, or related to the limits of liability adjustment process, should be directed to Dr. Marshall Rose, Chief, Economics Division, Office of Strategic Resources, Bureau of Ocean Energy Management at 381 Elden Street, MS-4050 Herndon, Virginia 20170-4817 at (703) 787-1538 or email at [marshall.rose@boem.gov](mailto:marshall.rose@boem.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

In general, under Title I of OPA, the responsible parties for any vessel or facility, including any offshore facility, which discharges, or poses a substantial threat of discharge of, oil into or upon United States navigable waters, adjoining shorelines, or the exclusive economic zone, are liable for the OPA removal costs and damages that result from such incident (as specified in 33 U.S.C. 2702(a) and (b)). Under 33 U.S.C. 2704(a), however, the total liability of the responsible parties is limited (with certain exceptions specified in 33 U.S.C. 2704(c)). In instances when the OPA liability limit applies, the Oil Spill Liability Trust Fund (OSLTF) is available to compensate responsible parties and other claimants for removal costs and damages in excess of the liability limit, as provided in 33 U.S.C. 2708, 2712(a)(4), and 2713. The OPA at 33 U.S.C. 2704(a)(3) provides that responsible parties for an offshore facility incident are liable for "the

total of all removal costs plus \$75,000,000." The \$75 million limit of liability only applies to OPA damages.

To prevent the real value of the OPA limits of liability from declining over time as a result of inflation, and shifting the financial risk of oil spill incidents to the OSLTF, OPA (33 U.S.C. 2704(d)(4)) requires that the President adjust the limits of liability "not less than every three years," by regulation, to reflect significant increases in the CPI. This mandate has been in place since 1990.

Executive Order 12777, as amended, delegates the implementation of the President's OPA limit of liability inflation adjustment authority, dividing the responsibility among several Federal agencies. Among those delegations, section 4 of Executive Order 12777 vests the Secretary of the Interior (DOI) with authority to adjust the limit of liability for "offshore facilities, including associated pipelines, other than deepwater ports subject to the [Deepwater Port Act of 1974]" for inflation. In addition, section 4 of Executive Order 12777, as amended and in relevant part, vests in the Secretary of the Department in which the Coast Guard is operating the President's authority to adjust for inflation the OPA limits of liability for vessels and deepwater ports (including associated pipelines), and the statutory limit of liability for onshore facilities. This authority has been redelegated by the Secretary of Homeland Security to the Coast Guard.

In 2006, following several large oil spill incidents that exceeded the statutory limits of liability in 33 U.S.C. 2704(a), Congress enacted the Delaware River Protection Act (DRPA) of 2006 (Title VI of the Coast Guard and Maritime Transportation Act of 2006, Public Law. No. 109-241, July 11, 2006, 120 Stat. 516). DRPA increased the OPA statutory limit of liability for vessels. In addition, section 603 of DRPA amended OPA (33 U.S.C. 2704(d)(4)) to read as follows: "Adjustment to reflect consumer price index. The President, by regulations issued not

later than three years after July 11, 2006, and not less than three years thereafter, shall adjust the limits on liability specified in subsection (a) to reflect significant increases in the Consumer Price Index.” DRPA thus established a new statutory deadline of 2009 (three years after the passage of DRPA) for the President to promulgate the first set of regulatory inflation adjustments to the limits of liability.

### **Regulatory History**

On July 1, 2009, following substantial coordination with DOI and the other delegated agencies to achieve consistent approaches to the inflation adjustment mandate, the Coast Guard published an Interim Final Rule With Request For Comments (IFR) (74 FR 31357), implementing the first set of regulatory inflation adjustments to the limits of liability for vessels and deepwater ports, and establishing the methodology the Coast Guard will use for future inflation adjustments to the limits of liability for its delegated source categories. (See 33 CFR § 138.240. See also, Notice of Proposed Rulemaking, 73 FR 54997 (September 24, 2008), and Final Rule, 75 FR 750 (January 6, 2010)).

As described in the preamble to the Coast Guard’s IFR, DOI and other agencies with delegated authority for adjusting the OPA liability limits had originally agreed to follow the Coast Guard's inflation adjustment methodology when adjusting the limits of liability under their responsibility. After the Coast Guard's 2009 rulemaking was completed, DOI and other delegated agencies actively coordinated with the Coast Guard on the next set of inflation adjustments to the OPA liability limits.

### **Offshore Facility Limit of Liability**

This proposed rule would implement the first mandated adjustments, under 33 U.S.C. 2704(d)(4), to the OPA limit of liability for damages for offshore facilities to reflect significant

increases in the CPI. This proposed rule would also establish a methodology for making inflation adjustments to the OPA limit of liability for offshore facilities. To ensure maximum consistency in promulgating rules for CPI adjustments to the OPA limits of liability, the approach used by BOEM in the proposed rule, in most respects, and except as discussed further below under “Discussion of this Proposed Rule,” follows the inflation adjustment approach used by the Coast Guard in its 2009 CPI rulemaking, which adjusted the limits of liability for vessels and deepwater ports. That approach, found at 33 CFR part 138, subpart B, went through full notice and comment rulemaking, and received no adverse comments.

Offshore facilities are unique among the vessels and facilities covered under OPA. The OPA, at 33 U.S.C. 2704(a), assigns unlimited liability to the responsible parties for removal costs resulting from an offshore facility oil spill incident, and only limits their liability for the OPA damages that result from such a spill. The statutory offshore facility liability limit for OPA damages is \$75 million. This proposed rulemaking would adjust the offshore facility limit of liability for OPA damages to reflect significant increases in the CPI. The responsible parties’ liability for OPA removal costs arising from actions or events associated with an offshore facility oil spill incident would remain unlimited.

This proposed rulemaking would increase the \$75 million statutory offshore facility limit of liability for OPA damages to \$133.65 million. This increase reflects a 78.2 percent increase in the Consumer Price Index-All Urban Consumers (CPI-U) from 1990 through 2013.

#### **Oil Spill Financial Responsibility Requirements are Not Affected by this Rulemaking**

This rulemaking is intended to adjust the OPA offshore facility limit of liability for damages to reflect significant increases in the CPI. It would not affect the level of oil spill financial responsibility (OSFR) coverage (found in 33 U.S.C. 2716(c), and 30 CFR 553.13) that

responsible parties must demonstrate for covered offshore facilities (COFs) under subparts B through E in the regulations at 30 CFR Part 553.

The OPA offshore facility limit of liability applies to more facilities than are covered by the OSFR requirement. For example, the limit of liability for offshore facilities applies to all offshore facilities (other than deepwater ports) while OSFR coverage is required only for offshore facilities (other than deepwater ports) located seaward of the coastline, or in any portion of a bay connected to the sea with worst case oil discharge potential of more than 1,000 barrels and meeting other specific criteria in the definition of COF found in 30 CFR 553.3.

The OSFR coverage levels are specified at 33 U.S.C. 2716 and are not tied to the offshore facility limit of liability and therefore are not affected by the inflation adjustments required under OPA at 33 U.S.C. 2704(d)(4). The OSFR coverage provisions of OPA establish minimum and maximum coverage amounts for any activity involving a COF. The OSFR coverage amounts are found in OPA at 33 U.S.C. 2716(c) and in the regulations at 30 CFR 553.13.

Unlike the OPA evidence of financial responsibility requirements applicable to vessels and deepwater ports, which are administered by the Coast Guard and are directly tied to the applicable CPI-adjusted limits of liability, OSFR coverage requirements are not directly tied to, and their levels do not automatically increase with changes in, the offshore facility limit of liability. OPA does not authorize an OSFR increase based solely on an increase in the limit of liability for offshore facilities occasioned by CPI adjustments. Rather, as stated in 33 U.S.C. 2716(c)(1)(C), any adjustment to the required OSFR coverage amount must be separately “justified based on the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, or transported by the responsible party....”

BOEM may propose various changes to the Oil Spill Financial Responsibility regulations in a separate rulemaking. This rulemaking makes no proposed changes other than those described above.

### **Additional Regulatory Changes in 30 CFR Part 553**

In section 553.1, the purpose section would be expanded to include adjusting the limit of liability. In section 553.3, three new definitions would be added to facilitate the implementation of the inflation adjustment process. The three new terms that would be added to the regulations are as follows: *Annual CPI-U*, *Current Period*, and *Previous Period*.

## **DISCUSSION OF THIS PROPOSED RULE**

### **I. Explanation of the CPI Adjustment to the Offshore Facility Limit of Liability for Damages**

This proposed rule would implement the first adjustment, mandated by 33 U.S.C. 2704(d)(4), to the OPA limit of liability for damages for offshore facilities other than deepwater ports to reflect significant increases in the CPI. This rule would also establish the methodology that BOEM will use to make periodic CPI adjustments to the OPA offshore facility limit of liability for damages. These provisions are encompassed in a new 30 CFR 553 subpart G.

As mentioned in the **Regulatory History** section, the Department of the Interior is, in most respects, following the approach used by the Coast Guard in its 2009 CPI adjustments to the limits of liability for vessels and deepwater ports. That inflation adjustment methodology, found at 33 CFR part 138, subpart B, went through full notice and comment rulemaking, and received no adverse comments. As discussed further in item 5, below, the only substantive difference between this rulemaking and the Coast Guard's approach is the use of a 1990 "Previous Period," or baseline year, to calculate the percent change in the CPI-U. The Coast Guard rulemaking



documents explaining the CPI adjustment methodology are available in the public docket for their rulemaking.

**1. How would the Department of the Interior calculate CPI adjustments to the limit of liability for offshore facilities?**

We would calculate the new limit of liability for the offshore facility source category using the following formula:  $\text{New limit of liability} = \text{Previous limit of liability} + (\text{Previous limit of liability multiplied by the decimal equivalent of the percent change in the CPI from the year the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later, to the present year})$ , then rounded to the closest \$100. The only difference in the formula description from the Coast Guard regulations is use of “the decimal equivalent” since a quantity cannot properly be multiplied by a percent, but rather, must be multiplied by the decimal equivalent of a percent. This difference, however, is not substantive.

**2. Which CPI would the Department of the Interior use?**

The Bureau of Labor Statistics (BLS) publishes a variety of inflation indices. Consistent with the Coast Guard regulations at 33 CFR 138.240, BOEM plans to use the “Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982=100,” also known as “CPI-U.” CPI-U values may be viewed on the BLS website at: <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>. This index is used by the Coast Guard for its CPI adjustments to limits of liability, and is the most current and broadest index published by BLS. The CPI-U is also commonly relied on in insurance policies and other commercial transactions with automatic inflation protection, by the media, and by economic analysts.

**3. What time interval CPI-U would the Department of the Interior use for the adjustments?**

BLS publishes the CPI-U for both monthly and annual periods. For consistency with the Coast Guard's limits of liability CPI adjustment rule at 33 CFR part 138, subpart B, and simplicity, BOEM would use the annual period CPI-U (hereinafter the "Annual CPI-U") rather than the monthly period CPI-U.

**4. How would the Department of the Interior calculate the percent change in the Annual CPI-U?**

Consistent with the Coast Guard's inflation adjustment methodology, we would calculate the percent change in the Annual CPI-U using the BLS escalation formula described in Fact Sheet 00-1, U.S. Department of Labor Program Highlights, "How to Use the Consumer Price Index for Escalation," September 2000. This formula provides that: Percent change in the Annual CPI-U = [(Annual CPI-U for Current Period – Annual CPI-U for Previous Period) ÷ Annual CPI-U for Previous Period] X 100. Fact Sheet 00-1 is available from the BLS online at <http://www.bls.gov/cpi/cpi1998d.pdf>.

**5. Which Annual CPI-U "Previous Period" and "Current Period" would the Department of the Interior use for its first inflation adjustment to the offshore facility limit of liability?**

To maintain the real value of the offshore facility limit of liability for damages, as contemplated in the original OPA mandate that directed the limits of liability be adjusted for the CPI, we would use a "Previous Period" of 1990, the year OPA was enacted. For the "Current Period" we would use the most recently published Annual CPI-U (see 30 CFR 553.73(a)). This approach is consistent with the Coast Guard's OPA limits of liability rule at 33 CFR 138.240 for vessels and deep water ports.

For the calculations in this proposed rulemaking, we have used the 2013 Annual CPI-U, published on January 16, 2014. Future updates would proceed on a 3-year schedule as provided in 30 CFR 553.73.

**6. Why is the “Previous Period” the Department of the Interior proposes to use for offshore facilities different than the “Previous Periods” used by the Coast Guard for vessels and deepwater ports, which are also required to be adjusted in accordance with the CPI?**

The Coast Guard’s 2009 CPI rulemaking established two "Previous Period" dates for the first set of regulatory inflation adjustments to the limits of liability for the Coast Guard delegated source categories. Specifically, the Coast Guard established a "Previous Period" date of 2006 to adjust the statutory limits of liability in 33 U.S.C. 2704(a)(1), (2) and (4) for vessels, onshore facilities and deepwater ports other than Louisiana Offshore Oil Port (LOOP) facilities. As explained in the Coast Guard rulemaking documents, that date was chosen based on the date of enactment of the DRPA, July 11, 2006, which was the last date Congress adjusted the statutory limits of liability in 33 U.S.C. § 2704(a). In addition, the Coast Guard established 1995 as the "Previous Period" date for calculating the first regulatory inflation adjustment to the limit of liability for the Louisiana Offshore Oil Port (LOOP). The August 4, 1995, date was selected based on the date the LOOP deepwater port limit of liability was established by regulation (see 60 FR 39849).

Unlike the Coast Guard’s reliance on previous adjustments by legislation in 2006 and regulation in 1995 to determine its “Previous Period” to adjust the limits of liability for vessels and deepwater ports other than LOOP facilities, no such adjustments have occurred for offshore facilities since OPA’s enactment in 1990. In the absence of such adjustments, BOEM does not believe it may use a later “previous period” or baseline, given the clarity of the 1990 statutory

mandate. Accordingly, BOEM intends to use 1990 as the "Previous Period" date for this first CPI adjustment to the offshore facility statutory limit of liability for damages.

In addition to the fact that there has been no previous adjustment of the limit of liability for offshore facilities, the lessons learned from the *Deepwater Horizon* (DWH) explosion and oil spill support BOEM's intention to use the earlier "Previous Period" of 1990 in this rulemaking. Since the passage of OPA, the DWH offshore facility oil spill has resulted in damages exceeding the offshore facility limit of liability. The DWH explosion and oil spill demonstrates that, although rare, catastrophic offshore facility oil spill incidents causing damages in excess of the offshore facility limit of liability can occur. The DWH incident, moreover, highlights the potential inadequacy of the statutory \$75 million-per-incident offshore facility limit of liability for damages, and several bills have been proposed in Congress to repeal or substantially increase that statutory limit of liability.

Given the fact that no adjustments to the limit of liability for offshore facilities have been made since OPA was first enacted in 1990, as well as changes to our collective understanding about the risks of offshore drilling occasioned by the DWH explosion and oil spill, including the possibility of natural resource and other damages exceeding the OPA offshore facility statutory limit of liability, the DOI has determined that it is appropriate to implement the most protective measures available within its existing statutory authorities. Specifically, BOEM believes it is appropriate to recognize the cumulative rate of inflation that has occurred since the passage of OPA for this first adjustment to the offshore facility limit. For that reason, BOEM would use a 1990 "Previous Period" in its CPI adjustment methodology resulting in a CPI percentage increase through 2013 of approximately 78.2 percent (since 1990) versus an increase of 15.6 percent (since 2006).

**7. How would the Department of the Interior calculate the adjustment to the limit of liability and what would the new limit be?**

The following illustrates how we plan to apply the BLS escalation formula to calculate the decimal equivalent of the percent change in the Annual CPI-U to adjust the limit of liability for offshore facilities. The Annual CPI-U (index base period (1982-84=100)) for Current Period (2013): 232.957 [minus] Annual CPI-U for Previous Period (1990): 130.7 [equals] an index point change: 102.257 [divided by] Annual CPI-U for Previous Period: 130.7 [equals] 0.782; result multiplied by 100:  $0.782 \times 100$  [equals] percent change in the Annual CPI-U: 78.2 percent. Note that the cumulative percent change value is rounded to one decimal place as provided in § 553.703.

The “Current Period” value for this methodology will be the Annual CPI-U for the previous calendar year, due to the BLS Annual CPI-U publication schedule.

Applying these values, BOEM will adjust the statutory offshore facility limit of liability for OPA damages of \$75 million by the 78.2 percent increase in the Consumer Price Index (CPI-U) that has taken place since 1990, to \$133,650,000.

**8. How would the Department of the Interior calculate the percent change for subsequent inflation adjustments to the OPA limit of liability for offshore facilities?**

This rule would also establish the adjustment methodology the DOI would use for subsequent CPI adjustments to the OPA limit of liability for offshore facilities. We would adopt the same calculation methodology found in 33 CFR 138.240 of the Coast Guard regulations referenced earlier. Key features for the future inflation adjustments to the limit of liability include:

- BOEM plans to publish the inflation adjustments to the limit of liability for offshore facilities every three years, beginning in 2014, provided that the threshold for a significant increase in the Annual CPI-U is met, consistent with the Coast Guard regulations at 33 CFR 138.240(b). The current adjustment will use the Annual 2013 CPI-U “Current Period.”
- The DOI has discretion to adjust the offshore facility limit of liability more frequently by regulation than every three years to reflect significant increases in the CPI.
- If Congress amends the limit of liability for offshore facilities, we would calculate the Annual CPI-U change with the “Previous Period” beginning with the year in which Congress amends the limit of liability.
- The DOI would evaluate whether the cumulative percent change in the Annual CPI-U since the last “Current Period” has exceeded three percent in the three years beginning in 2017 (using the 2016 Annual CPI-U as the “Current Period”). If the change is greater than three percent, a final rule will be published in the Federal Register with the new inflation-adjusted offshore facility limit of liability. The three percent or more constitutes a significant increase threshold. If, following the three-year period, the cumulative percent change in the Annual CPI-U is less than three percent, the DOI would publish a notice of no inflation adjustment to the limit of liability.
- Following a notice of no inflation adjustment, the DOI would evaluate the cumulative percent change in the Annual CPI-U annually and adjust the limit based on the cumulative percent change in the Annual CPI-U once the three-percent threshold is reached.

**9. How would BOEM provide public notice for the offshore facility limit of liability adjustments?**

BOEM plans to publish subsequent CPI or statutory adjustments to the offshore facility limit of liability for damages through a final rule in the Federal Register. A final rule would provide for timely notice of the CPI adjustments and would keep the offshore facility limit of liability amount current in BOEM regulations.

## **II. Additional Changes to 30 CFR part 553**

### **1. Update to section 553.1 (What is the purpose of this part?)**

The purpose of this section would be revised to reflect the purpose of the new Subpart G addressing the limit of liability for offshore facilities, as adjusted, under Title I of the Oil Pollution Act of 1990, as amended, 33 U.S.C. 2701 *et seq.* (OPA).

### **2. Definition changes for terms found at 30 CFR 553.3 (“How are the terms used in this regulation defined?”)**

We propose to add definitions to 30 CFR 553.3: *Annual CPI-U*, *current period*, and *previous period*. Also, we would replace the definition in 30 CFR 553.3 of *Responsible party*. BOEM is proposing to replace the definition of *responsible party* because the current regulatory definition is limited to the responsible party for a COF. The proposed definition incorporates the OPA statutory definition and clarifies that if operating rights are limited to particular areas or depths, so are responsible party obligations.

## **III. Summary of Changes to 30 CFR part 553 by Subpart**

### **Amendments to Subpart A**

Changes to sections 553.1 and 553.3, as described above.

### **Amendments to Subpart B**

None

### **Amendments to Subpart C**

None

**Amendments to Subpart D**

None

**Amendments to Subpart E**

None

**Amendments to Subpart F**

None

**Addition of new Subpart G**

New Subpart, as described above.



## **LEGAL & REGULATORY ANALYSES**

### **Presidential Executive Orders**

#### **E.O. 12630 - Takings Implication Assessment**

According to Executive Order 12630, the proposed rule does not have significant takings implications. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights. A Takings Implication Assessment is not required.

#### **E.O. 12866 - Regulatory Planning and Review**

The Office of Management and Budget (OMB) has not reviewed this rulemaking under section 6(a)(3) of E.O. 12866. BOEM does not believe this rulemaking constitutes a “significant regulatory action” under E.O. 12866 based on the following:

(1) These provisions simply adjust the offshore facility limit of liability for damages by the CPI. This rule will likely not have an effect of \$100 million or more on the economy. It will likely also not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The new offshore facility limit of liability increases the pollution liability of offshore facility responsible parties and may result in increased costs if damages exceed \$75 million. If damages from an offshore facility oil spill exceed \$75 million, the higher limit of liability in this rule will impose greater nominal costs on the responsible parties. In constant 1990 dollars, the proposed limit of liability for offshore facilities is the same as established in OPA and preserves the “polluter pays” principle. The infrequent occurrence of large oil spills from offshore facilities suggests that the compliance costs from this increase in the limit of liability are likely to be immaterial to the operating costs for offshore facility responsible parties over time.

The proposed provisions do not impact oil spill financial responsibility under 30 CFR part

553. Based on the maximum potential worst case oil spill discharge, approximately 110 of the 170 companies with COFs are required to demonstrate OSFR coverage of \$70 million or less (see 30 CFR 553.13). These 110 companies should see no insurance premium increases because of the increased limit of liability, since the level of required OSFR is not impacted by these adjustments to the current \$75 million limit of liability. Another five companies must demonstrate OSFR coverage of \$105 million. BOEM believes that these companies will not see increased insurance premiums because of the increase of the limit of liability to \$133.65 million, just as the few companies demonstrating the \$150 million in OSFR coverage that are not self-insured or guaranteed will also likely not be affected by this proposed rule. However, because BOEM cannot estimate how much, or if, insurance underwriters might increase their premiums for OSFR coverage, we welcome specific comments on the impact of an increased limit of liability, absent corresponding increases in required OSFR coverage.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. BOEM has coordinated with the Coast Guard and the Department of Justice on this rulemaking.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule does not raise any novel legal or policy issues. OPA requires the offshore facility limit of liability to be adjusted for inflation not less than every three years.

#### **E.O. 12988 - Civil Justice Reform**

This proposed rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**E.O. 13045 - Protection of Children from Environmental Health Risks and Safety Risks**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or a risk to safety that may disproportionately affect children.

**E.O. 13132 - Federalism**

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule does not have substantial direct effects on the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule will not affect that role. A Federalism Assessment is not required.

**E.O. 13175 - Consultation and Coordination with Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Under the criteria in E.O. 13175, we evaluated this proposed rule and determined that it has no substantial direct effects on federally recognized Indian tribes.

**E.O. 13211 - Effects on the Nation's Energy Supply**

We have analyzed this proposed rule under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” We have determined that it is not a “significant energy action” under that order. This proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### **E.O. 13563 - Improving Regulation and Regulatory Review**

E.O. 13563 requires that our regulatory system protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

This Executive Order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866. As stated in that Executive Order, and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of

cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive benefits; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information with which choices can be made by the public.

The increased offshore facility limit of liability for damages in this rulemaking is required by statute (OPA). This rulemaking does not amend the OSFR requirements in 30 CFR part 553. Although BOEM does not believe that OSFR insurance premiums will be significantly impacted by this rulemaking, it is soliciting comments on that issue. The limit of liability increase is necessary to ensure that the deterrent effect and the “polluter pays” principle embodied in OPA’s liability provisions are preserved.

### **Clarity of this Regulation**

E.O. 12866 (section 1(b)(2)), E.O. 12988 (section 3(b)(1)(B)), and, E.O. 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, require that every agency write its rules in plain language. This means that, wherever possible, each rule must: (a) have a logical organization; (b) use the active voice to address readers directly; (c) use common, everyday words, and clear language, rather than jargon; (d) use short sections and sentences; and (e) maximize the use lists and tables.

If you feel that we have not met these requirements, send your comments to [Peter.Meffert@boem.gov](mailto:Peter.Meffert@boem.gov). To better help us revise the proposed rule, your comments should be

as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you think we wrote unclearly, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### **Public Availability of Comments**

We will post all comments, including names and addresses of respondents, at [www.regulations.gov](http://www.regulations.gov). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

## **Statutes**

### **Data Quality Act**

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Public Law. No. 106-554, app. C sec. 515, 114 Stat. 2763, 2763A-153 to 154).

### **National Environmental Policy Act (NEPA) of 1969**

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. BOEM has analyzed this proposed rule under the criteria of the National Environmental Policy Act (NEPA) and the Department's regulations implementing NEPA. This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this proposed rule is “. . . of an administrative, financial, legal, technical, or procedural nature . . . .” Further, BOEM has analyzed this proposed rule to determine if it involves any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.215 and concluded that this proposed rule would not involve any extraordinary circumstances.

This proposed rule involves congressionally mandated regulations designed to protect the environment, specifically regulations implementing the requirements of the OPA.

### **National Technology Transfer and Advancement Act**

The National Technology Transfer and Advancement Act (NTTAA, Public Law No. 104-113) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials,

performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not require the use of any technical specifications or standards and, therefore, the requirement to follow voluntary consensus standards does not apply to this rulemaking.

### **Paperwork Reduction Act (PRA) of 1995**

This rulemaking does not contain new information collection requirements, and a submission under the PRA is not required. Therefore, an information collection request is not being submitted to OMB for review and approval under the PRA (44 U.S.C. 3501 *et seq.*). The OMB approved the information collection for the 30 CFR 553 regulations under OMB Control Number 1010-0106.

### **Regulatory Flexibility Act**

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes in the proposed rule may potentially affect all oil and gas lessees and operators of leases and pipeline right-of-way holders in the OCS and in state waters. This could include about 170 active operators and owners. These approximately 170 operators and owners provide OSFR coverage for more than 7,800 OCS Right-of-Use and Easement (RUE) facilities, pipeline Rights-of-Way (ROWs) and leases (both with and without permanent facilities). Small lessees, ROW or RUE holders or operators that operate under this proposed rule primarily fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, 213111, Drilling Oil and



Gas Wells and 237120 Oil and Gas Pipeline and Related Structures. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated two-thirds of these companies are considered small. This proposed rule, therefore, would affect a substantial number of small entities, but it would not have a significant economic effect on those entities since the OSFR thresholds are not being adjusted.

This proposed rule could impact certain OCS operators and owners through negligibly higher insurance premiums or surety levels. Most small entities do not self-insure, but rather share ownership with larger companies that provide them with OSFR coverage or else they obtain insurance for their OSFR obligations in the private marketplace. We do not expect the 78.2 percent increase in the limit of liability to cause the OSFR insurance premiums to materially increase because of the very low anticipated frequency of claims. Any potential increased insurance premium should be relatively insignificant as compared to the considerable operational costs and liability risks associated with activities on the OCS. This is true for even the smallest of OCS operators and owners. We welcome specific comments on any expected or potential corresponding OSFR premium increases that may occur because of the increased limit of liability or for some related reason.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate an agency's responsiveness to small business. If you wish to comment on the actions of BOEM, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

## **Small Business Regulatory Enforcement Fairness Act**

Pursuant to section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 ([Pub. L. No. 104-121](#)), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking. If you believe that this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marshall Rose, of the BOEM Economics Division, at the address in the **COMMENTING SECTION** listed above.

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule would not:

- have an annual effect on the economy of \$100 million or more;
- cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,
- have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The requirements of this rule will apply to all entities having oil and gas operations on the OCS.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the BOEM, call 1-888-REG-FAIR (1-888-734-3247).

## **Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector, of more than \$100 million per year. The proposed rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

**List of Subjects in 30 CFR Part 553**

Administrative practice and procedure, Continental shelf, Economic analysis, Environmental impact statements, Environmental protection, Financial responsibility, Government contracts, Intergovernmental relations, Investigations, OCS, Oil and gas exploration, Oil pollution, Liability, Limit of Liability, Penalties, Pipelines, Public lands--mineral resources, Public lands--rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Treasury securities.

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Tommy P. Beaudreau  
Principal Deputy Assistant Secretary  
Land and Minerals Management

February 14, 2014

Date

For the reasons stated in the preamble, the Bureau of Ocean Energy Management, (BOEM) proposes to amend 30 CFR part 553 as follows:

**PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES**

1. Revise the authority citation for part 553 to read as follows:

**Authority:** 33 U.S.C. 2704, 2716; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended.

2. Revise § 553.1 to read as follows:

**§ 553.1 What is the purpose of this part?**

This part establishes the requirements for demonstrating Oil Spill Financial Responsibility for covered offshore facilities (COF) and sets forth the procedures for claims against COF guarantors and the limit of liability for offshore facilities, as adjusted, under Title I of the Oil Pollution Act of 1990, as amended, 33 U.S.C. 2701 *et seq.* (OPA).

3. Amend § 553.3 by:

- a. Adding in alphabetical order the terms “Annual CPI-U” “Current period,” and “Previous period;”

- b. Revising the definition of “Responsible party;”

The changes to read as follows:

**§ 553.3 How are the terms used in this regulation defined?**

\* \* \* \* \*

*Annual CPI-U* means the Annual Consumer Price Index-All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982–84=100, published by the U.S. Department of Labor, Bureau of Labor Statistics.

\* \* \* \* \*

*Current period* means the year in which the Annual CPI–U was most recently published.

\* \* \* \* \*

*Previous period* means the year in which the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later.

*Responsible party* has the meaning in 33 U.S.C. 2701(32)(C), (E) and (F). This definition includes, as applicable, lessees, permittees, right-of-use and easement holders, and pipeline owners and operators. The owner of operating rights in a lease is a responsible party with respect to facilities that serve or served an area and depth in which it holds operating rights, but not with respect to any facility that only serves parts of the lease to which it does not hold operating rights.

\* \* \* \* \*

4. Add subpart G to part 553 to read as follows:

#### **Subpart G—Limit of Liability for Offshore Facilities**

Sec.

- |         |  |
|---------|--|
| 553.700 | What is the scope of this subpart?   |
| 553.701 | To which entities does this subpart apply?   |
| 553.702 | What limit of liability applies to my offshore facility?                               |
| 553.703 | What is the procedure for calculating the limit of liability adjustment for inflation? |
| 553.704 | How will BOEM publish the offshore facility limit of liability adjustment?             |

#### **Subpart G—Limit of Liability for Offshore Facilities**

##### **§ 553.700 What is the scope of this subpart?**

This subpart sets forth the limit of liability for damages for offshore facilities under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701 *et seq.*) (OPA), as adjusted, under

section 1004(d) of OPA (33 U.S.C. 2704(d)). This subpart also sets forth the method for adjusting the limit of liability for damages for offshore facilities for inflation, by regulation, under section 1004(d) of OPA (33 U.S.C. 2704(d)).

**§ 553.701 To which entities does this subpart apply?**

This subpart applies to you if you are a responsible party for an offshore facility, other than a deepwater port under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), but including an offshore pipeline, or an abandoned offshore facility, including any abandoned offshore pipeline.

**§ 553.702 What limit of liability applies to my offshore facility?**

Except as provided in 33 U.S.C. 2704(c), the limit of OPA liability for a responsible party for any offshore facility, including any offshore pipeline, is the total of all removal costs plus \$133.65 million for damages with respect to each incident.

**§ 553.703 What is the procedure for calculating the limit of liability adjustment for inflation?**

The procedure for calculating limit of liability adjustments for inflation is as follows:

(a) *Formula for calculating a cumulative percent change in the Annual CPI-U.* BOEM calculates the cumulative percent change in the Annual CPI-U from the year the limit of liability was established by statute, or last adjusted by regulation, whichever is later ( *i.e.*, the Previous Period), to the year in which the Annual CPI-U is most recently published ( *i.e.*, the Current Period), using the following formula:  $\text{Percent change in the Annual CPI-U} = [(\text{Annual CPI-U for Current Period} - \text{Annual CPI-U for Previous Period}) \div \text{Annual CPI-U for Previous Period}] \times 100$ . This cumulative percent change value is rounded to one decimal place.

(b) *Significance threshold.* (1) A cumulative increase in the Annual CPI-U equal to three percent or more constitutes a significant increase in the Consumer Price Index within the meaning of 33 U.S.C. 2704(d)(4).

(2) Not later than every three years from the year the limit of liability was last adjusted for inflation, BOEM will evaluate whether the cumulative percent change in the Annual CPI-U since that year has reached a significance threshold of three percent or greater.

(3) For any three-year period evaluated under paragraph (b)(2) of this section in which the cumulative percent increase in the Annual CPI-U is less than three percent, BOEM will publish a notice of no inflation adjustment to the offshore facility limit of liability for damages in the Federal Register.

(4) Once the three-percent threshold is reached, by final rule BOEM will increase the offshore facility limit of liability for damages in § 553.702 by an amount equal to the cumulative percent change in the Annual CPI-U from the year the limit was established by statute, or last adjusted by regulation, whichever is later.

(5) Nothing in this paragraph (b) will prevent BOEM, in BOEM's sole discretion, from adjusting the offshore facility limit of liability for damages for inflation by regulation issued more frequently than every three years.

(c) *Formula for calculating inflation adjustments.* BOEM calculates adjustments to the offshore facility limit of liability in § 553.702 for inflation using the following formula:

*New limit of liability = Previous limit of liability + (Previous limit of liability  
× the decimal equivalent of the percent change in the Annual CPI-U calculated  
under paragraph (a) of this section), then rounded to the closest \$100*

**§ 553.704 How will BOEM publish the offshore facility limit of liability adjustment?**

BOEM will publish CPI adjustments to the offshore facility limit of liability in § 553.702 through the publication of final rules in the Federal Register.

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